No. 78603-8

MADSEN, J. (dissenting)—In *Hearst Corporation v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978), this court adopted *Restatement (Second) of Torts* § 652D (1977), which recites the common law, as the definition of the "right of privacy" in the Public Records Act (PRA), chapter 42.56 RCW.[1] In 1987, the legislature explicitly stated that the definition adopted in *Hearst* is the legislatively intended meaning that "right of privacy" has under the PRA. Laws of 1987, ch. 403, § 2, at 1547.

Without justification, the majority refuses to accept the common law meaning set out in *Hearst*. In reformulating the definition of "right to privacy," the majority disregards the legislature's intent that the common law definition

[1] When the statutes formerly appearing in chapter 42.17 RCW concerning public records were recodified at chapter 42.56 RCW, the legislature stated that the chapter "may be known and cited as the public records act." RCW 42.56.020. I cite the statutes as they have been recodified and refer to the act by its present title: the Public Records Act (PRA). The majority refers to the act as it was previously known (the public disclosure act) because the public records request in this case occurred before recodification of the act.

explicitly adopted by the court in *Hearst* is what the term "right of privacy" means.

Building on its mistake, the majority concludes that only substantiated allegations of sexual misconduct are disclosable. However, this distinction is contrary to the PRA. Instead, where the records concern allegations of misconduct occurring in the course of carrying out public duties they are disclosable under the PRA regardless of whether the allegations are true.

It is important to bear in mind that unsubstantiated does not mean untrue. A 2004 report prepared for the United States Department of Education attests to the fact that sexual misconduct by educators abusing children in the public schools, including the public schools in Washington State, is an extremely serious and inadequately addressed problem. Policy & Program Studies Serv., U.S. Dep't of Educ., Educator Sexual Misconduct: A synthesis of existing literature (2004) (hereafter Educator Sexual Misconduct). This report states that 9.6 percent of all children in grades 8 to 11 suffer educator sexual misconduct. Educator Sexual Misconduct at 17-18.[2] "[M]ore than 4.5 million students are subject to sexual

[2] "9.6 percent of all students in grades 8 to 11 report contact and/or noncontact educator sexual misconduct that was *unwanted*." Educator Sexual Misconduct at 17-18. 6.7 percent reported physical sexual abuse. *Id*. at 18. These conclusions are based on an analysis that used data collected for the American Association of University Women in the fall of 2000 by Harris International, whose trained interviewers administered a survey to a "sample … drawn from a list of 80,000 schools to create a stratified two-stage sample design of 2,065 8th to 11th grade students." Educator Sexual Misconduct at 16-17. Representative subpopulations were included in the sample. *Id*. at 17. "The findings can be generalized to all public school students in 8th to 11th grades at a 95 percent confidence level with a margin of error of plus or minus 4 percentage points." *Id*. The

misconduct by an employee of a school sometime between kindergarten and 12th grade." *Id*. at 18. But because school districts often do not adequately investigate, allegations of such misconduct are incorrectly recorded as unsubstantiated.

Under the majority's holding, the public in Washington will not have access to information necessary for determining whether the State's school districts satisfactorily address allegations of teacher sexual misconduct. As a consequence, predatory teachers may go undetected and unpunished. But the most unfortunate consequence, and one that is completely unacceptable, is that if predatory teachers are undetected, children will continue to suffer at their hands. I dissent.

ANALYSIS

The issue before the court in this case is whether records pertaining to allegations of teachers' sexual misconduct against students constitutes the type of personal information encompassed by the right of privacy as described at common law and, if so, would disclosure of this material violate the right. The inquiry involves a two-part analysis and the second question, whether the right has been violated, arises only if the court first determines that the information is protected by the right to privacy.

In *Hearst*, this court concluded that the "right of privacy" means "what it meant at common law," specifically, the definition in the *Restatement (Second) of*

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report indicates that these findings underestimate educator sexual misconduct in schools. *Id*. at 18.

Torts § 652D (1977) (§ 652D). *Hearst*, 90 Wn.2d at 135. The court then went on to explain what kind of information falls within the protected right, again with resort to the common law as described in the *Restatement*: "The comment to the Restatement illustrates *what nature of facts* are protected by this right to privacy." *Hearst*, 90 Wn.2d at 135-36 (emphasis added). The information encompassed within the right of privacy are the "'intimate details'" of a person's life, for example, "'[s]exual relations, . . . family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget.'" *Id*. (quoting § 652D cmt. b).

In subsequent cases, this court and the Court of Appeals have adhered to "the standard *and analysis*" of the *Restatement*, *Hearst*, 90 Wn.2d at 136 (emphasis added), reaffirming that the right to privacy concerns "the intimate details of one's personal and private life," *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989); *see also Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 720-23, 726, 748 P.2d 597 (1988) ("the court must first decide whether the matters to be disclosed involve 'personal privacy' as defined by § 652D to wit: intimate details of one's personal and private life"), *overruled on other grounds by Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 791 P.2d 526 (1990); *Dawson v. Daly*, 120 Wn.2d 782, 796, 845 P.2d 995 (1993), *overruled on other grounds by Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d

243, 884 P.2d 592 (1995) (*PAWS*); *Yakima Newspapers, Inc. v. City of Yakima*, 77 Wn. App. 319, 327, 890 P.2d 544 (1995).

Not only did this court specifically and expressly adopt this common law definition of the right of privacy, including the description of the nature of the information protected, and reaffirm it thereafter, but also the legislature stated in 1987 that the definition adopted in *Hearst* is the legislatively intended meaning that "right of privacy" has under the act. Laws of 1987, ch. 403, § 2, at 1547 ("'privacy' . . . is intended to have the same meaning as the definition given that word by the Supreme Court in *Hearst*"). The legislature also enacted legislation stating that the right of privacy "is *invaded or violated* only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." RCW 42.56.050 (emphasis added); *see* Laws of 1987, ch. 403, § 2. This statute, like § 652D of the *Restatement*, describes *when a violation* of the right to privacy occurs, but does not tell us *what information* is encompassed by the right. For this, the rest of the explanation in *Hearst* is necessary, i.e., the right of privacy generally protects from disclosure the intimate details of one's personal and private life.

The majority rejects this established description of the kind of information encompassed by the right of privacy, saying that the PRA does not state or imply in RCW 42.56.050 that the right of privacy is so limited. Majority at 12 n.13 (citing former RCW 42.17.255 (1987)). But the act does not define the term at all

and instead the legislature expressly said this court's definition in *Hearst* is the meaning that the right to privacy has under the act, including the description of the kind of information falling within the right—the intimate details of one's personal and private life. I believe the court should follow the legislature's directive and give "right to privacy" the meaning the legislature has said it has—the meaning, the *full* meaning, stated in *Hearst*.

Under the correct definition of right to privacy, the teachers have no right to privacy in their identities. The Times contends that allegations of teacher sexual misconduct relate to teachers' interactions with students in the course of the public performance of their teaching duties. Therefore, the Times reasons, RCW 42.56.050 is not triggered because it applies only when information protected by the right of privacy is requested. The Times contends that public performance of teaching duties it is not information that is encompassed by the right of privacy and therefore it is not information falling within the employee privacy exemption on which the teachers rely.

The Times is correct that the material in a teacher's file relating to allegations of sexual misconduct involving students is not information that is protected by the right of privacy. It does not pertain to the intimate details of one's personal and private life but is instead information about alleged specific instances of misconduct occurring in the course of the teacher's performance of his or her public duties—a kind of information that this court has specifically

identified as not encompassed by the right of privacy.

Appellate cases addressing privacy exemptions confirm that information relating to the performance of public duties, no matter how embarrassing is not information protected by the right of privacy. In *Dawson*, 120 Wn.2d at 796, the court carefully limited its holding that a routine employee evaluation is the kind of information subject to the test of RCW 42.56.050. The court distinguished from routine employee evaluations those evaluations that address specific instances of misconduct or the performance of public duties. *Dawson*, 120 Wn.2d at 796-97.[3] This distinction was central to the analysis in *Cowles Publishing*, which the court acknowledged in *Dawson*, 120 Wn.2d at 795-96.

In *Cowles Publishing*, the court considered whether the PRA required disclosure of the names of law enforcement officers against whom complaints had been upheld following internal investigations. One issue was whether the release of the officers' names would constitute an unreasonable invasion of privacy. A seven-member majority of the court agreed on the privacy analysis (the four-member lead opinion and the three-member dissent authored by Justice Dolliver),

[3] The court held that the right of privacy includes an "'evaluation of an individual's work performance, even if favorable.'" *Dawson*, 120 Wn.2d at 796 (quoting *Celmins v. Dep't of Treasury*, 457 F. Supp. 13, 15 (D.D.C. 1977)). The court explained: """Employment records would reasonably contain, among less sensitive information, references to family problems, health problems, past and present employers' criticism and observations, military records, scores from IQ [intelligence quotient] tests and other performance tests . . . and other matters, many of which most individuals would not willingly disclose publicly."'" *Dawson*, 120 Wn.2d at 797 (quoting *Missoulian v. Bd. of Regents*, 207 Mont. 513, 524, 675 P.2d 962 (1984) (quoting *Mont. Human Rights Div. v. City of Billings*, 199 Mont. 434, 442, 649 P.2d 1283 (1982))).

which explicitly confirmed and followed the analysis in *Hearst* while expressly rejecting an argument that the analysis in *Hearst* should be limited to its facts. *Cowles Publ'g*, 109 Wn.2d at 722.

The court said that

> the information contained in the police investigatory reports . . . does not involve private matters, but does involve events which occurred in the course of public service. *Instances of misconduct* of a police officer *while on the job* are not *private, intimate, personal details of an officer's life* when examined from the viewpoint of the *Hearst* case. They are matters with which the public has a right to concern itself.

Id. at 726 (emphasis added). The court concluded: "a law enforcement officer's actions while performing his public duties . . . do not fall within the activities to be protected under the comment to § 652D of Restatement (Second) of Torts as a matter of 'personal privacy.'" *Id*. at 727.

The Court of Appeals in *Columbian Publishing Co. v. City of Vancouver*, 36 Wn. App. 25, 29-30, 671 P.2d 280 (1983), similarly rejected a claim that disclosure of police officers' complaints against the police chief would violate the privacy rights of the police chief. The court concluded that because the statements concerned the police chief's professional job performance they did not violate the police chief's right to privacy and were not exempt from disclosure.

In accord with *Dawson*, *Cowles Publishing*, and *Columbian Publishing*, information about specific instances of misconduct occurring in the course of performance of public duties is not protected by the right of privacy. A teacher's

interactions with students at school or in connection with school-related events, programs, and duties, occurring during the teacher's performance of his or her public duties, are not protected by the right of privacy. They do not concern the intimate details of a teacher's private and personal life, or information obtained during employee performance evaluations, or other private information in employment records that, as *Dawson* noted, routinely include information relating to things like family problems, health problems, employers' criticisms and observations, military records or similar records, or scores from IQ (intelligence quotient) tests and other performance tests. Instead, they relate to allegations of specific instances of misconduct while performing public duties. Accordingly, an allegation of a teacher's sexual misconduct against a student is not information protected by the right to privacy and therefore the privacy exemption should not apply. Because the information is not of the kind protected by the right to privacy, the court should not reach the question whether under the two-part test of RCW 42.56.050 the right to privacy would be violated by disclosure of the teachers' identities, i.e., whether "'the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate public concern.'" *Hearst*, 90 Wn.2d at 135-36 (quoting § 652D). The teachers' identities are required to be disclosed under the PRA and the employee privacy exemption of 42.56.230(2) does not apply.

The majority says, however, that an *accusation* of sexual misconduct is not

an action taken by an employee in the course of performing public duties and therefore does not fall within the same category as in *Cowles*. Majority at 15. First, the "accusation" of misconduct is not the action taken by the employee; rather, it is the employee's alleged *conduct*, not the student's *accusation* that is the focus of the right to privacy inquiry. Second, the majority's belief that if the accusation is unsubstantiated, then the conduct does not occur within the scope of public duties is in fact contrary to *Cowles*. As previously mentioned, the information sought in *Cowles* was the identity of individuals against whom the *charges* of misconduct occurring in the course of public duties had been laid. Whether substantiated or unsubstantiated, the misconduct alleged is misconduct occurring during the course of public duties. Third, the majority's criticism, majority at 15 n.17, that I have misconstrued *Cowles* fails to recognize the fact that public school teachers who prey on school children do so in the course of performing their public duties.

In addition, the majority's belief that whether the accused teachers' identities must be disclosed depends upon substantiating the accusations is also erroneous. Because the majority fails to understand what constitutes personal information encompassed by the right of privacy, the majority concludes that where records concern allegations of unsubstantiated sexual misconduct, the privacy exemption protects teachers' identities from disclosure. But the majority's distinction between substantiated and unsubstantiated claims is not supported by

the statutory language of the PRA or by case law that holds that even allegations of misconduct that are false may be ordered disclosed. Thus, the fact that the misconduct may be unsubstantiated, or the allegation even untrue, does not mean the teachers' identities must be protected from disclosure. For example, in *Columbian Publishing*, 36 Wn. App. at 27, 29-30, the complaints against the police chief were ordered released when no conclusions had been reached about those complaints.

Moreover, the majority's analysis fails to account for one of the underlying purposes of the PRA—accountability of public agencies. Because the majority decides that a teacher's identity is not disclosable where the misconduct is unsubstantiated, and rejects the idea that the adequacy of a school district's investigation has any bearing on disclosure, the majority leaves school districts free to control whether an accused teacher's identity must be released by controlling the scope and depth of its investigation. Drawing the line for disclosure at records relating to unsubstantiated allegations fails to recognize the immense pressures on school districts. First, school districts come under pressure from the teachers and their associations to withhold teachers' names. At the same time, if the school districts vigorously pursue allegations of sexual misconduct, they face the threat of lawsuits from students and their parents. *See*, *e.g.*, *Christensen v. Royal Sch. Dist. No. 160*, 156 Wn.2d 62, 124 P.3d 283 (2005) (a student with whom a teacher had a sexual relationship and her parents sued a

school district for negligent supervision and negligence in hiring); *Cloud v. Summers*, 98 Wn. App. 724, 991 P.2d 1169 (2000) (a student and the parents sued a school district for negligent supervision and retention and wrongful interference with the parent-child relationship based on a teacher's sexual abuse of the student); *see generally*, *e.g.*, Janet Philibosian, *Homework Assignment: The Proper Interpretation of the Standard for Institutional Liability if We Are to Protect Students in Cases of Sexual Harassment by Teachers*, 33 SW. U. L. Rev. 95, 95 (2003) (discussing suits against schools under Title IX).

The school districts may also face lawsuits from teachers because allegations of sexual misconduct can threaten a teacher's career or lead to discharge. *See*, *e.g.*, *Wright v. Mead Sch. Dist. No. 354*, 87 Wn. App. 624, 944 P.2d 1 (1997) (review of administrative decision terminating public school teacher's employment on the basis of inappropriate sexual conduct with students); *Sauter v. Mount Vernon Sch. Dist. No. 320*, 58 Wn. App. 121, 791 P.2d 549 (1990) (same). Legal proceedings command financial and other resources whether successful or not.

A school district can effectively control whether an accused teacher's identity must be released by reaching an agreement with the teacher exchanging resignation for silence. *See generally* Ralph D. Mawdsley & Steven B. Permuth, *Nondisclosure Provisions in School District Settlement Agreements*, 163 Ed. L. Rep. 2 (2002); W. Richard Fossey, *Confidential Settlement Agreements Between*

School Districts and Teachers Accused of Child Abuse: Issues of Law and Ethics, 63 Ed. L. Rep. 1 (1990) ("[a] covenant of non-disclosure is often included in the settlement agreement between a school district and a teacher accused of sexual molestation or other child abuse"). *Id*. at 2

The possibilities discussed above are real. In *Educator Sexual Misconduct* at 44, the following is reported:

> In an early study of 225 cases of educator sexual abuse in New York, all of the accused had admitted to sexual abuse of a student but none of the abusers was reported to authorities and only 1 percent lost their license to teach. [Charol Shakeshaft & Audrey Cohan, *In Loco Parentis: Sexual Abuse of Students in Schools* 1-40 (Admin. & Policy Studies, Hofstra Univ. 1994).] All of the accused had admitted to physical sexual abuse of a student but only 35 percent received a negative consequence for their actions: 15 percent were terminated or, if not tenured, they were not rehired; and 20 percent received a formal reprimand or suspension. Another 25 percent received no consequence or were reprimanded informally and off-the-record. Nearly 39 percent chose to leave the district, most with positive recommendations or even retirement packages intact.

Lest it be thought that these statistics are irrelevant to Washington State, the following is also included in the report:

> O'Hagan and Willmsen report that of 159 Washington State coaches "who were reprimanded, warned, or let go in the past decade because of sexual misconduct . . . at least 98 of them continued coaching or teaching afterward." [Maureen O'Hagan & Christine Willmsen, *Coaches Who Prey,* The Seattle Times, Dec. 15, 2003.] Many school districts make confidential agreements with abusers, trading a positive recommendation for a resignation. O'Hagan (2004) details two examples of coaches in Washington that illustrate this practice. [Maureen O'Hagan, *Teacher Conduct Proposal May Get Diluted,* The Seattle Times, Feb. 13, 2004.]
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> In 1995, a Sharples Alternative School student accused

> [a] tutor of going to her home . . . and forcing her to have sex with him. . . .
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> When the district investigated, [the tutor] refused to answer questions . . . .
>
> The district's human-resources director later told [the tutor] in a letter: "The District investigation revealed that you went to the home of one of your female students . . . , you were let inside, and that you forced her to have sex with you."
>
> Records indicate the district suspected that [the tutor] may have victimized other girls. After negotiations, the district allowed [the tutor] to resign, promising in writing not to tell future employers about the allegations.
>
> In another example, O'Hagan (2004) reports that a Seattle educator . . . had two decades of complaints of sex with students and providing alcohol and marijuana to students prior to his arrest for smuggling six tons of marijuana into the state. The district paid [him] the remainder of his salary that year, agreed to keep the record secret, and gave him an additional $69,000.

Educator Sexual Misconduct at 44-45.

Placing the power in the hands of school districts to control, to any extent, whether disclosure is required is incompatible with the PRA. The court has stated many times that leaving the interpretation of the PRA to the agencies at which it is aimed "would be the most direct course to its devitalization." *Hearst* 90 Wn.2d at 131; *see also Amren*, 131 Wn.2d at 34 n.6; *Servais v. Port of Bellingham*, 127 Wn.2d 820, 834, 904 P.2d 1124 (1995); *Brouillet*, 114 Wn.2d at 794. Basing disclosability on whether alleged conduct is substantiated or unsubstantiated, when that determination lies in the hands of the very agency from which disclosure is sought, does not serve the PRA's goals to ensure the sovereignty of the people and the accountability of the governmental agencies that serve them, *see PAWS*, 125

Wn.2d at 251.

It is no answer, contrary to the majority's suggestion, that reports of an investigation are still disclosable, just without the teacher's identity. Without sufficient information, including the identities of the teachers, the public will lack the ability to engage in the governmental oversight at the heart of the PRA. More specifically, the public will lack the information necessary to ensure that a specific teacher does not continue to have access to children, whether at the same school or another. As the *Educator Sexual Misconduct* report shows, a predator may move from one school to another. There is therefore much to be said for the Court of Appeals' concern, which I share, that multiple allegations of sexual misconduct can create a troubling pattern. The court explained:

> [I]t is . . . possible that the accuser was accurately reporting inappropriate conduct. Where that possibility exists, the public has a legitimate interest in knowing the name of the accused teacher. If a teacher's record includes a number of complaints found to be "unsubstantiated," the pattern is more troubling than each individual complaint. Yet, if the teacher's name in each individual complaint is withheld from public disclosure, the public will not see any troubling pattern that might emerge concerning that teacher.

Bellevue John Does 1-11 v. Bellevue School Dist. No. 405, 129 Wn. App. 832, 856, 120 P.3d 616 (2005).[4]

Moreover, a critical problem that this case brings to light, and that cannot

[4] Repeated accusations by different children leveled at the same teacher may suggest that a real threat to students exists. That information is unattainable under the PRA if teachers' identities are not disclosable, and replacing a teacher's name with a number, as the majority suggests is an alternative to naming teachers, will not protect students whose parents cannot attach the number to a particular teacher.

and should not be ignored, is that accusations of sexual abuse of children by a teacher may be unsubstantiated for the same reason that child abuse in general may be unsubstantiated. The adult and the victim are often the only witnesses. *See State v. C.J.*, 148 Wn.2d 672, 680-81, 63 P.3d 765 (2003). Additionally, studies indicate that "[e]ducator sexual predators are often well-liked and considered excellent teachers." Educator Sexual Misconduct at 49. There may be reluctance on the part of a school district to believe that a "well-liked," "excellent" teacher would engage in such misconduct, and this reluctance could be carried into any investigation of allegations—especially where the only witnesses are the teacher and the student.

Students are already reluctant to report sexual misconduct by teachers. *Educator Sexual Misconduct* at 35, explains:

> When students do report, they almost always report incidents of contact sexual abuse—touching, kissing, hugging, or forced intercourse. Verbal and visual abuse are rarely reported to school officials. Of the cases that come to a superintendent's attention, nearly 90 percent are contact sexual misconduct (Shakeshaft and Cohan, 1994). When alleged misconduct is reported, the majority of complaints are ignored or disbelieved (Shakeshaft and Cohan, 1994). Other students note this lack of response and conclude that teachers (or coaches or administrators) cannot be stopped. [Charol Shakeshaft, *Educator Sexual Abuse,* Hofstra Horizons, Spring 2003, at 10-13.]. If the school will not act, what can a mere student do?
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> Few students, families, or school districts report incidents to the police or other law enforcement agencies. When criminal justice officials are alerted, it is almost always because parents have made contact. Thus, most cases are not entered into criminal justice information system (Shakeshaft and Cohan, 1994). As one consequence, abusers are subject only to informal personnel actions within the relative privacy of school employee records (Shakeshaft

> and Cohan, 1994).
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> . . . Robins (2000) found that the most common reason that students don't report educator sexual misconduct is fear that they won't be believed. [Sydney L. Robins, *Protecting Our Students* (Ontario, Canada, Ministry of Att'y Gen. 2000)]. Research indicates that students have good reasons to suspect they won't be believed. Robins documents the case of a teacher . . . who was convicted of sexually abusing 13 students over a period of 21 years. Nearly all of the students reported this abuse at the time. However, school officials did not take these accusations seriously.
>
> Overwhelmingly, the girls experienced a disastrous response when they told about [the teacher's] behavior. Many were disbelieved, some were told to leave schools, parents were allegedly threatened with lawsuits.

(Footnote omitted.) To hold school districts accountable for their investigations and teachers accountable for their conduct, but most importantly of all, to protect students, information must be available. When materials concerning allegations of teachers' sexual misconduct are available to the public, that information enables the public to oversee the agencies charged with the education and care of public school children for fully half of all their days, spanning a period of 12 years, thus carrying out the purposes of the PRA, and the possibility of disclosure can act as a powerful deterrent to sexual misconduct by educators.

For all of these practical reasons, information about an allegation where the sexual misconduct is unsubstantiated, including the teacher's identity, can constitute critical information that is necessary for objective oversight of the job that the public schools are doing to protect school children from teachers who engage in sexual misconduct involving children. Disclosure of the identities of the

teachers who are alleged to have engaged in sexual misconduct involving students is therefore of legitimate public concern.

Finally, I am troubled by the majority's attraction to the rule that the identities of teachers who are subjects of unsubstantiated allegations should remain undisclosed because it is an easy rule to apply. I do not believe that the majority's conclusion conforms to the requirement that exemptions to the disclosure mandate of the PRA should be narrowly construed. *See* RCW 42.56.030 (the PRA "shall be liberally construed and its exemptions narrowly construed") (formerly RCW 42.17.251 (1992)); *Brouillet*, 114 Wn.2d at 793, 797; *Hearst*, 90 Wn.2d at 128. Instead, the majority's interpretation of the PRA narrows the requirements of disclosure while expanding the employee privacy exemption.

CONCLUSION

The majority incorrectly determines what information is protected under the right to privacy, as this term is used in the PRA. It refuses to follow the court's previous cases describing the kind of facts the right to privacy protects. Properly applying the test we adopted in *Hearst*, which was expressly approved by the legislature, reports of allegations of sexual misconduct against children by their teachers, including the teachers' identities, must be disclosed whether the sexual misconduct is substantiated or not. In holding that only substantiated reports of sexual misconduct require disclosure of teachers' identities, the majority fails to follow the PRA and frustrates the enormously important goal of protecting

children from predators.

I dissent.

AUTHOR:
Justice Barbara A. Madsen

WE CONCUR:

Justice Charles W. Johnson

Justice Richard B. Sanders